



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME Council 93, Local 2301
Seabrook Supervisory Employees
Complainant
v.
Town of Seabrook
Respondent
Case No. M-0592-23
Decision No. 2003-006

PRE-HEARING DECISION and ORDER

BACKGROUND

AFSCME Council 93, Local 2301, Seabrook Supervisory Employees ("Union") filed unfair labor practice charges on November 22, 2002 pursuant to RSA 273-A:5 I (e), (g), and (h) alleging that the Town of Seabrook ("Town") and its agents breached certain provisions of the parties' Collective Bargaining Agreement (CBA) and violate the specified provisions of the statute when it posted the position of Deputy Fire Chief to solicit applicants for that position and included an offered salary that was other than had previously negotiated by the parties.

The Union requests relief in the form of a finding that the Town has engaged in an unfair labor practice and requests that the PELRB issue a cease and desist order against the Town prohibiting it from making unilateral changes affecting wages or conditions of work without negotiating the same with the Union. The Union also wants the PELRB to order the Town to reimburse the Union for all costs. For its part, the Town seeks a dismissal of the Union's complaint for failure to state a claim and an award of reasonable attorneys' fees and costs.

PARTICIPATING REPRESENTATIVES

For the Complainant: Jack McMath, NH Coordinator, AFSCME
Katherine McClure, Assistant General Counsel, AFSCME

For the Respondent: Douglas Mansfield, Esquire

PRIMARY ISSUES FOR DETERMINATION BY THE BOARD

1. Whether or not the Town committed an unfair labor practice by its actions in modifying the salary range for the position of Deputy Fire Chief without negotiating said change with the certified exclusive bargaining representative?

WITNESSES

For the Complainant:

1. Jack McMath, NH Coordinator, AFSCME
2. David Currier, President, Local 2301

For the Respondent:

1. E. Russell Bailey, Town Manager
2. Jeff Brown, Fire Chief
3. Oliver Carter, Member, Board of Selectmen
4. Karen Knight, Member, Board of Selectmen

Both parties reserve the right to amend their List of Witnesses in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order, or upon proper showing, later reasonable notice to the other party. It is understood that each party may rely on the representations of the other party that witnesses appearing on their respective list will be available at the hearing.

EXHIBITS

Joint Exhibits:

1. Collective Bargaining Agreement

For the Complainant:

1. Job posting, dated June 19, 2002
2. Job posting, dated October 7, 2002

For the Respondent:

1. Job description for Deputy Fire Chief
2. Submitted job applications for position (redacted)

Both parties reserve the right to amend their List of Exhibits in conformity with the schedule contained in the DECISION SECTION appearing at the conclusion of this order or, upon proper showing,

later reasonable notice to the other party. Copies of all exhibits are to be submitted to the presiding officer in accordance with Pub 203.02. It is to be understood by the parties that each party may rely on the representations of the other that the exhibits listed above will be available at hearing.

LENGTH OF HEARING

The time being set aside for a hearing of this matter is one-half day. If either party believes additional time is required, written notice of the need for additional time shall be filed with the PELRB no later than ten (10) days from the date of this Order.

ORDER

Upon the representation of counsel for both parties that the matter had been resolved by agreed stipulations and an offer of proof consisting of a copy of the settlement agreement, it is hereby ORDERED that:

1. The Union shall conduct its ratification vote on the Settlement Agreement on or before January 21, 2003.
2. The Union shall file a signed Settlement Agreement with the PERLB on or before January 24, 2003.
3. Upon receipt of the signed Settlement Agreement, this matter shall be dismissed and the record shall reflect that it was done administratively by agreement of the parties.

So Ordered.

Signed this 16th day of January, 2003

/s/ Donald E. Mitchell

Donald E. Mitchell, Esq.

Hearing Officer

Distribution:

Jack McMath, NH Coordinator AFSCME

Katherine McClure, Assistant General Counsel, AFSCME

Douglas Mansfield, Esquire